



Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

August 09, 2016

25 August 9, 2016

LORI GLASGOW
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE NO. 6684 (PARCEL
20 AT 13935 PANAY WAY MARINA DEL REY)
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board letter requests approval of Amendment No. 1 to Marina del Rey Amended and Restated Lease No. 6684 for Parcel 20 (Panay Way Marina) that readjusts the Percentage Rents, Annual Minimum Rent, and General Liability insurance.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Lease Amendment No. 1 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 1 to Lease No. 6684 pertaining to the readjustment of the Percentage Rents, Annual Minimum Rent, and General Liability insurance for the ten-year period ending May 10, 2025.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey leases generally provide for the periodic review of leasehold rents to ensure that the percentage rents payable to the County are maintained at current fair market rental value levels and the amount of general liability insurance is adequate to protect County's interests.

Amendment No. 1 to County Lease No. 6684 for Parcel 20 in Marina del Rey (Lease) with Panay Way Marina, L.P. (Lessee) requires the adjustment of the Percentage Rents, Annual Minimum Rent, and General Liability insurance on May 11, 2015 (2015 First Decennial Renegotiation Date) and every tenth anniversary thereafter.

Effective as of May 11, 2015, the proposed Amendment No. 1 to the Lease adjusts the Percentage Rents and Annual Minimum Rent to fair market rental value, and updates the required general liability insurance as follows:

- Percentage Rents for apartments, hotel and/or motel accommodations, house trailers, meeting rooms, and rental of land and/or water or facilities for activities not otherwise provided for by the Lease, including without limitation television and/or motion pictures, are increased from 10.5% to 11%. There is no change for the other percentage rent categories;
- The new Annual Minimum Rent is increased from \$383,306 to \$410,653 based on 75% of the total average annual rent payable by the Lessee to the County over the three years prior to May 11, 2015;
- Amendment No. 1 to the Lease requires THIRTY MILLION DOLLARS (\$30,000,000) of General Liability insurance and incorporates changes to the insurance provisions of the Lease to conform to the Chief Executive Office Risk Management Branch's current requirements.

Implementation of Strategic Plan Goals

The recommended action will keep County's percentage rents at Parcel 20 comparable to other Marina del Rey leaseholds in fulfillment of the Strategic Plan Goal No. 1 (Operational Effectiveness/Fiscal Sustainability).

FISCAL IMPACT/FINANCING

Amendment No. 1 to the Lease will increase Annual Minimum Rent from \$383,306 to \$410,653 based on 75% of the total average annual rent payable by the Lessee to the County over the three years prior to May 11, 2015. The increase in Percentage Rents is projected to yield an additional \$15,356 in leasehold rent revenue to the County in Fiscal Year 2016-17 Budget.

Operating Budget Impact

Upon your Board's approval of proposed Amendment No. 1 to the Lease, the Department of Beaches and Harbors will receive approximately \$15,356 in annual increases in leasehold rent revenue. The revenue increase was not budgeted in the Fiscal Year 2015-16 Budget; therefore, the additional revenue will be accounted for as one-time over-realized revenue. The annual increase received from Fiscal Year 2016-17 is budgeted in the Department's Fiscal Year 2016-17 Recommended Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Marina del Rey Parcel 20, commonly known as "Panay Way Marina," is improved with: (a) a four-story apartment building containing 99 residential units, totaling 112,126 gross square feet built over

two levels of parking; (b) a two-story commercial building utilized as professional offices and a yacht club, containing 5,031 net rentable square feet; and (c) 139 boat slips. Other ancillary improvements include a restroom building, an asphalt-paved parking area containing 50 parking spaces, walkways, and landscaping.

Amendment No. 1 has been approved as to form by County Counsel. At its meeting on July 13, 2016, the Small Craft Harbor Commission unanimously endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Lease Amendment No. 1 is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services or projects from your Board's approval of Amendment No. 1.

CONCLUSION

Please have the Chair of your Board sign all three copies of the Amendment No. 1, and have the Executive Officer of the Board return two (2) executed copies, as well as an adopted-stamped copy of this letter to the Department of Beaches and Harbors, retaining a copy for your records. Should you have any questions please contact Natasha Robinson at (310) 306-6144 or NRobinson@bh.lacounty.gov.

Respectfully submitted,



GARY JONES

Director

GJ:BL:SP:MR:nr

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

**AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 20 – MARINA DEL REY
(LEASE NO. 6684)**

THIS AMENDMENT TO LEASE ("Amendment" or "Amendment No. 1") is made and entered into this 9th day of August, 2016 (the "Effective Date")

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as "County",**

AND

**PANAY WAY MARINA, L.P.
a California limited partnership**

RECITALS:

WHEREAS, on September 9, 2004, County and Lessee entered into Amended and Restated Lease No. 6684 (the "Lease") under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 20 (the "Premises"), which Premises are more particularly and legally described in Exhibit "A" to the Lease; and

WHEREAS, Section 4.4 of the Lease requires renegotiation of the Annual Minimum Rent and Percentage Rates as of May 11, 2005, and on each tenth (10th) anniversary thereafter, the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value in accordance with the standards established in Section 4.4 of the Lease; and

WHEREAS, Section 9.3 of the Lease provides that the amounts of liability insurance required by this Section shall be subject to renegotiation as of each fifth (5th) anniversary of September 9, 2004; and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the same meanings given such terms in the Lease; and

WHEREAS, the parties hereto have reached an agreement with respect to the required adjustments which are to apply for the ten (10) year period effective as of May 11, 2015 ("2015 First Decennial Renegotiation Date"), and wish to amend the Lease as set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby

6684 Supplement No. 13

deemed a contractual part hereof, and the mutual agreements, covenants and restrictions contained herein, the parties agree as follows:

1. **Percentage Rent.** Effective as of May 11, 2015, Section 4.2.2(c) of the Lease is deleted and replaced with the following:

(c) ELEVEN percent (11%) of Gross Receipts or other fees charged for the occupancy of structures and other facilities including but not limited to (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, and (5) rental of land and/or water or facilities for activities not otherwise provided for in this section such as but not limited to television and/or motion pictures.

2. **Adjustments to Annual Minimum Rent.** Effective as of May 11, 2015, Section 4.3 is deleted and replaced with the following:

4.3. The new Annual Minimum Rent Adjustment Date is May 11, 2015. As of May 11, 2015, the new Annual Minimum Rent is Four Hundred Ten Thousand Six Hundred Fifty Three Dollars (\$410,653.00) which amounts to Thirty Four Thousand Two Hundred Twenty One Dollars and Eight Cents per month (\$34,221.08/month). The adjustments to the Annual Minimum Rent shall continue each third (3rd), sixth (6th) and ninth (9th) anniversaries of May 11, 2015 (each an "Adjustment Date" and collectively the "Adjustment Dates") until the next Decennial Renegotiation Date ("Renegotiation Date"), when the Annual Minimum Rent shall be adjusted to the Fair Market Value as described in Section 4.4 of the Restated Lease. Until the Renegotiation Date, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date.

4.3.1. Notwithstanding any contrary provision hereto, in no event shall the Annual Minimum Rent be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date."

3. **Renegotiation of Annual Minimum and Percentage Rents.** Effective as of May 11, 2015, the first paragraph of Section 4.4 of the Lease (paragraph immediately preceding Section 4.4.1.) is deleted and replaced with the following:

"4.4. Effective on each tenth (10th) anniversary of the 2015 First Decennial Renegotiation Date (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises."

Sections 4.4.1. through 4.4.5. of the Lease shall remain in full force and effect and

unmodified.

4. **Retroactive Rent and Interest.** In accordance with Lease Section 4.4.5, Lessee shall pay to County, within seven (7) days following the Effective Date of this Amendment No.1, the difference, if any, between (a) the Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. County shall further be entitled to interest, compounded monthly, on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid, at the following rates:
- (i) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller (County Pool Rate); and
 - (ii) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.
5. **Security Deposit.** Effective as of May 11, 2015, the **second sentence** of Section 7.1 of the Lease is deleted and replaced with the following:
- "Within thirty (30) days after receipt of the written notification of each adjustment of the Annual Minimum Rent, Lessee shall adjust its Security Deposit to be equal to three (3) times the then-current Minimum Monthly Rent."
6. **Insurance.** Effective as of May 11, 2015, the **first paragraph** of Section 9.3 of the Lease is deleted and replaced with the following:

9.3. **General Liability Insurance.** Lessee shall maintain in full force and effect during the Term of this Lease, comprehensive general liability insurance together with premises operations, products, completed operations advertising, independent contractor and contractual liability coverages, including liquor liability, with a combined single limit of not less than Thirty Million Dollars (\$30,000,000); Lessee agrees that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers (collectively, County and its Agents), shall be named as additional insureds under such liability insurance policy or policies.

Lessee shall obtain a separate Marina Operator's Liability insurance policy with limits of not less than \$5 million per occurrence and \$10 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the

expiration or earlier termination of this Lease, or replacement coverage shall be maintained until such time.

Lessee shall not be required to indemnify, defend or hold County harmless with respect to the existence of any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvements as long as (I) such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

Because the amounts of Liability Insurance were not negotiated between the County and the Lessee on or after September 9, 2009 and before September 9, 2014 (Insurance Renegotiation Days, Section 9.3. of the Lease), **the arbitration clause to renegotiate the insurance provision shall be waived for this Decennial Renegotiation only.** The insurance arbitration clause shall continue in full effect for any following Insurance Renegotiation Dates.

The remainder of Section 9.3. shall be unmodified and shall continue in full effect.

7. **Counterparts.** This Amendment may be signed in counterparts. Each counterpart represents an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.
8. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby. In the event of a conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

(Signature page follows)

/

/

/

/

/

/

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 1 to the Lease No. 6684 to be subscribed by the Chair of said Board and attested by the Executive Officer thereof, and the Lessee or its duly authorized representative, has executed the same.

THE COUNTY OF LOS ANGELES

By: Hilda F. Solis
Chair, Board of Supervisors

PANAY WAY MARINA, L.P.,
a California limited partnership

By: [Signature]
Barry Cayton, as Co-Trustee of the
Goldrich Trust No. 1, a general partner

ATTEST:

LORI GLASGOW,
Executive Officer - Clerk of the Board of Supervisors

By: Rachelle Smitherman
Deputy



APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: [Signature]
Deputy

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

LORI GLASGOW
Executive Officer
Clerk of the Board of Supervisors

By: Rachelle Smitherman
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

Lori Glasgow
LORI GLASGOW
EXECUTIVE OFFICER

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 245 to 262 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

Subject to the public easement reserved by the County of Los Angeles in Section 15.19 of this Lease.